

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

ORIGINAL

In The Matter of

TELEPHONE NUMBER PORTABILITY

**CC Docket No. 95-116
RM 8535**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"),¹ through undersigned counsel and pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), hereby replies to selected requests by Ameritech, the Bell Atlantic telephone companies ("Bell Atlantic"), SBC Communications, Inc. ("SBC"), and the Sprint Local Telephone Companies ("Sprint") (collectively, the "Incumbent LEC Petitioners") for reconsideration of the Commission's Third Report and Order, FCC 98-82, released in the captioned docket on May 12, 1998. Specifically, TRA opposes the Incumbent LEC Petitioners' various requests that the Commission reconsider its ruling that incumbent local exchange carriers ("LECs") may not include among the carrier-specific costs directly related to providing number portability recoverable through federally-tariffed end-user

¹ A national trade association, TRA represents more than 650 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. TRA includes among its members not only the majority of interexchange carriers, but the majority of competitive local exchange carriers as well.

number portability charges and number portability query charges any general overhead costs other than those incremental additional overhead costs that they can demonstrate were incurred specifically in providing long-term number portability.

SBC and Sprint urge the Commission to sanction the use of general overhead factors in computing carrier-specific costs directly related to providing long-term number portability, arguing that incumbent LECs should be allowed to incorporate into end-user number portability charges and number portability query charges a fully allocable share of general overhead expense.² Ameritech disagrees, concurring with the Commission that only those incremental additional overhead costs directly attributable to long-term number portability should be recovered through end-user and query charges, but urges the Commission to permit it to use an allocation factor to identify the incremental additional overhead costs.³ For its part, Bell Atlantic urges the Commission to reconsider its prohibition against use of general overhead factors only as it relates to number portability query services.⁴

TRA urges the Commission to deny the Incumbent LEC Petitioners' reconsideration requests as they relate to recovery of overhead costs through federally-tariffed end-user number portability charges and number portability query charges. As the Commission has recognized a long-term number portability cost recovery mechanism must achieve two ends. First, and most

² Petition of the Sprint Local Telephone Companies for Reconsideration and Clarification ("Sprint Petition") at 1 - 4; Petition for Clarification and Reconsideration of SBC Communications, Inc. ("SBC Petition") at 4 - 7.

³ Petition for Expedited Reconsideration and Clarification of Ameritech ("Ameritech Petition") at 4 - 8.

⁴ Petition for Reconsideration of Bell Atlantic ("Bell Atlantic Petition") at 4.

critically, costs must be recovered in a competitively neutral manner, ensuring that "the cost of number portability borne by each carrier does not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace."⁵ Second, the cost recovery scheme must afford incumbent LECs "a reasonable opportunity to receive just compensation for their carrier-specific costs directly related to long-term number portability."⁶ The Commission's treatment of overhead expense associated with the provision of long-term number portability satisfies each of these two criteria.

Allowing a carrier to recover overhead expense not directly attributable to the provision of long-term number portability would be inconsistent with the concept of competitive neutrality. As the Commission has recognized, costs allocated through use of a general overhead factor "do[] not necessarily bear a direct relationship to the actual costs incurred."⁷ Thus, to the extent that an incumbent LEC were to burden competitors with number portability query charges inflated by excess overhead expense, it would compromise the competitive neutrality of the recovery scheme. Moreover, as the Commission properly points out, an incumbent LEC that is recovering through use of a general overhead factor overhead expense other than the additional incremental overhead expense occasioned by its provision of long-term number portability, would be double recovering pre-existing overhead costs already being recovered through other charges. This double

⁵ Third Report and Order, CC Docket No. 95-116, FCC 98-82 at ¶ 52.

⁶ Id. at ¶ 149.

⁷ 800 Data Base Access Tariffs and the 800 Service Management System Tariff (Report and Order), 11 FCC Rcd. 15227, ¶ 55 (1996).

recovery also undermines the competitive neutrality of the recovery mechanism by taking from competitors monies to which the incumbent LEC is not entitled.

The Commission's cost recovery scheme also affords incumbent LECs a reasonable opportunity to recovery carrier-specific costs directly related to the provision of long-term number portability. Under the Commission's approach, incumbent LECs are entitled to factor into their federally-tariffed end-user number portability charges and number portability query charges all "incremental overheads they can demonstrate they incurred specifically in the provision of long-term number portability."⁸ In other words, while LECs must identify and document, rather than merely assert, that they have incurred additional overhead costs in providing long-term number portability, such costs, once identified and documented, can be fully recovered through end-user and query charges.

Sprint and SBC argue, however, that the Commission's treatment of overhead costs in the context of long-term number portability is inconsistent with its reliance elsewhere upon loading factors and other fixed allocators.⁹ Indeed, Sprint even suggests that use of general overhead factors to recover long-term number portability costs is necessary to maintain competitive neutrality.¹⁰ Missing from Sprint's and SBC's analysis, however, is the recognition that recovery of costs associated with long-term number portability presents a unique circumstance. Long-term number portability is not a new competitive service which the Commission must ensure adequately

⁸ Third Report and Order, CC Docket No. 95-116, FCC 98-82 at ¶ 74.

⁹ Sprint Petition at 1 - 2; SBC Petition at 4 - 6.

¹⁰ Sprint Petition at 2 - 3.

recovers its costs to avoid anticompetitive effects. Rather, it is a statutorily-mandated obligation, which, by statute, must be fulfilled in a competitively neutral manner. The sole purpose of the end-user and query charges is to recover "carrier-specific costs directly related to providing number portability." "Allocating," as Sprint suggests, "common costs evenly among all services offered"¹¹ not only does not further, but is flatly inconsistent with, this end.

Sprint and SBC further contend that not only would general overhead factors not result in a double recovery of overhead expenses, but use of general overhead factors is necessary to ensure that all such expenses are recovered.¹² First, as the Commission has correctly noted, Section 251(e)(2) does not require the Commission "to ensure that carriers recover all their number portability costs;"¹³ the incumbent LEC need only be provided with a reasonable opportunity to do so.¹⁴ More importantly, as noted above, the Commission has provided incumbent LECs with a means by which they can recover all incremental additional overhead costs associated with the provision of long-term number portability; incumbent LECs need only identify and document these costs to ensure their recovery.¹⁵ As to claims that use of a general overhead factor in computing number portability end-user and query charges would not produce a double recovery, such contentions would be true only if these charges were required to bear some allocable portion of

¹¹ Id. at 3.

¹² Sprint Petition at 2 - 4; SBC Petition at 6 - 7.

¹³ Third Report and Order, CC Docket No. 95-116, FCC 98-82 at ¶ 59.

¹⁴ Id. at ¶ 149.

¹⁵ Id. at ¶ 74.

common costs which could not be directly assigned and these costs were not already being recovered through other charges -- neither of which is the case here.

Ameritech asserts, however, that the means provided by the Commission for recovery of additional incremental overhead costs occasioned by the provision of long-term number portability will not allow for full cost recovery because incumbent LECs cannot efficiently identify such costs.¹⁶ According to Ameritech, it is not economically feasible for an incumbent LEC to identify the additional incremental costs that are directly attributable to number portability without the use of factors and allocations. In support of this claim, Ameritech cites several cost studies it has undertaken which have failed to isolate and measure common costs associated with the endeavors that were the subject of the studies. TRA submits that the integrity of a regulatory mechanism should not be sacrificed to accommodate a carrier which cannot identify and document its own costs.

Bell Atlantic, joined by Ameritech, argues that "[w]hatever the merits of [the Commission's 'determin[ation] that number portability costs may not include general overhead factors'] for calculating the end user surcharge, it is plainly incorrect when applied to query services."¹⁷ The thrust of Bell Atlantic's argument is that query services are simply services, which like any other service "should bear their fair share of Bell Atlantic's general overhead costs."¹⁸ Number portability query services are not like other services because they are part of a statutorily-mandated mechanism to promote competition. The pricing of these services must take into account

¹⁶ Ameritech Petition at 4 - 7.

¹⁷ Bell Atlantic Petition at 4; Ameritech Petition at 7 - 8.

¹⁸ Id.

the context in which the services are being provided. Just as number portability query services must recover only carrier-specific costs directly related to long-term number portability, so too must they be limited to overhead costs directly attributable to this function. As the Commission has made clear, "query costs are more appropriately considered carrier-specific costs directly related to providing number portability."¹⁹

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to deny the reconsideration requests of Ameritech, Bell Atlantic, SBC and Sprint discussed above.

Respectfully submitted,

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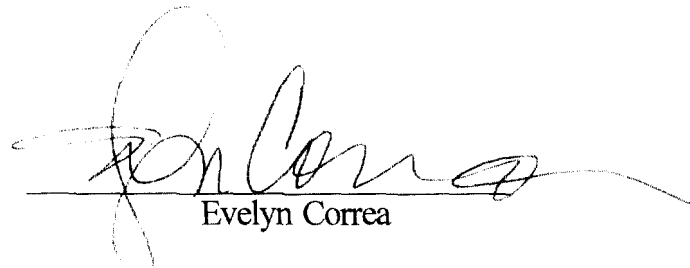
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September 3, 1998

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CERTIFICATE OF SERVICE

I, Evelyn Correa, do hereby certify that I have this 3rd day of September, 1998, caused copies of the foregoing Motion for Leave to Intervene to be mailed by first class U.S. mail, postage prepaid, to the individuals listed on the attached service list.



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